

EXHIBIT 3

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MATTHEW KING)
)
vs.) CIVIL ACTION
) 4:12-cv-00341
EQUISTAR CHEMICALS, LP;)
LYONDELLBASELL INDUSTRIES)
N.V. A/K/A LYONDELLBASELL;)
BENJAMIN FRANKLIN WITHERS)
III, M.D. AND TAKE CARE)
HEALTH SYSTEMS, LLC)

lc

ORAL DEPOSITION

HENRY MUNIZ, M.D.

JANUARY 15, 2013

ORAL DEPOSITION OF HENRY MUNIZ, M.D., produced as a witness at the instance of the Defendants Benjamin Franklin Withers, III, M.D. and Take Care Health Systems, LLC, and duly sworn, was taken in the above-styled and numbered cause on the 15th day of January, 2013, from 10:10 a.m. to 1:30 p.m., before C. Lee Parks, Certified Shorthand Reporter in and for the State of Texas, reported by computerized stenotype machine at the offices of Renal Specialists of Houston, PA, 8876 Gulf Freeway, Suite 215, Houston, Texas 77017, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

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1 HENRY MUNIZ, M.D.,

2 having been first duly sworn, testified as follows:

3 EXAMINATION

4 Q. (BY MS. PHIPPS) Dr. Muniz, my name is Vicky
5 Phipps and I'm the attorney that represents the
6 Defendants Take -- Take Care and Dr. Withers in this
7 litigation. You understand that I do not represent
8 Mr. King?

9 A. Yes.

10 Q. All right. And you're here on behalf of Mr.
11 King as his expert testifying witness?

12 A. Correct.

13 Q. All right. One of the documents that I'm going
14 to introduce into evidence, I want to -- and as a -- as
15 a exhibit to this -- Excuse me -- deposition is the
16 Subpoena Duces Tecum which was the Notice of Deposition
17 and the documents we requested.

18 MS. PHIPPS: And I'm just going to have
19 you go ahead and mark this as Exhibit 58.

20 (Exhibit Muniz No. 58 marked)

21 Q. Were you given -- provided a copy of the Notice
22 of Deposition and the Subpoena Duces Tecum?

23 A. Yes.

24 Q. Okay. I'm just going to go over some of the
25 documents that you've produced today so I know what's

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1 limited knowledge about exactly what Mr. King does or
2 what he did as a Vibrations Tech Analyst, correct?

3 A. I have talked to him and I know how much
4 exercise he can do, how much he can or how much he
5 cannot do.

6 MS. PHIPPS: I'm going object to the
7 responsiveness.

8 Q. I'm talking about the specifics of his job as a
9 Vibrations Tech Analyst. How familiar are you with that
10 job?

11 A. No, I have no familiarity with that. I'm just
12 familiar from the history that I took from him how
13 physically -- what physically he can and cannot do.

14 Q. Okay. Okay. All right. So I'm going to move
15 on. I'm going to come back to Exhibit 1 -- I mean,
16 Exhibit 62 later and go through the rest of my
17 questions. As a nephrologist you specialize in treating
18 kidney disorders; is that right?

19 A. Uh-huh. Yes.

20 Q. All right. And that includes a specialization
21 in the area of dialysis, correct?

22 A. Correct.

23 Q. Could you explain to the jury what dialysis is?

24 A. Well, what it is is that when a patient has
25 kidney failure, that means the kidneys are not working.

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1 The job of the kidney is to clean the blood. If -- When
2 you have a patient that has kidney failure you cannot
3 get rid of the poisons. So anything they eat
4 accumulates in their blood and it causes all kinds of
5 symptoms. Dialysis, what you do with dialysis is you
6 remove the blood a little bit at a time out of the body,
7 goes through the kidney, it gets clean, and then we give
8 it back to the patient.

9 Q. All right. So you would consider yourself an
10 expert in nephrology?

11 A. Yes.

12 Q. All right. But you've not specialized in
13 visiting work sites to develop measures by which an
14 employee is -- is protected from hazards at work?

15 A. No, I have not done that.

16 Q. All right. You don't normally perform
17 walk-throughs of facilities like the -- the Lyondell
18 plant to analyze what risks the workers there might
19 face, correct?

20 A. Correct. I've never done that.

21 Q. All right. And you don't normally make
22 appointments with your patients' supervisors to
23 determine the exact physical requirements of the jobs
24 that your patients hold, correct?

25 A. I just go by what the patients tell me.

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1 nurse --

2 Q. Uh-huh.

3 A. -- the head nurse at DaVita. Because I know
4 that Dr. Withers called and said, you know, can he go
5 back to work? And I said yes, there needs to be a
6 30-pound restriction because he had a new fistula and
7 I -- that was being developed. He had a catheter that
8 can only be temporarily used for a while and then we
9 have to go with the fistula. But he had a fistula. So
10 I think I put a 30-pound restriction on him to go back
11 to work. I didn't want him to lift more than 30 pounds.

12 Q. And that was a restriction you -- you gave
13 verbally to Dr. Withers?

14 A. I gave it verbally to Deena, who I think sent
15 the information to Dr. Withers. That's what I recall
16 now.

17 Q. You think she sent something in writing to
18 Dr. Withers?

19 A. I think there's something. Deena sent a letter
20 saying that he has -- There was some writing somewhere.

21 Q. That he could --

22 A. I remember -- That I remember, it was -- was
23 given to Dr. Withers.

24 Q. All right.

25 A. I think it's in the records somewhere if I

Page 36

1 recall correctly.

2 Q. Was -- Does Deena work with DaVita --

3 A. Yes.

4 Q. -- or was --

5 A. Yes.

6 MS. PHIPPS: Let's go off the record.

7 (Discussion off the record.)

8 Q. I don't see any letter like that. Dr. Muniz,
9 we need some -- Looking back at Exhibit 30 --

10 A. Uh-huh.

11 Q. -- it does not include any restrictions other
12 than a need to have dialysis three days a week for the
13 rest of the patient's life or until patient gets a
14 kidney transplant. Do you see that?

15 A. Right.

16 Q. All right.

17 A. But again, I didn't sign this.

18 Q. Right. And you -- you can't tell who did sign
19 it. Who are the people who could've signed it in your
20 office who are also nephrologists?

21 A. I would say probably Dr. Coca or Dr. Uyeda.

22 Q. A Dr. who?

23 A. Uyeda.

24 Q. How do you spell that?

25 A. U-y-e-d-a. Or Dr. Koka, K-o-k-a.

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1 for -- for -- for patients that are in dialysis as
2 opposed to people who have normal kidney function?

3 MS. MARTIN: Objection, form.

4 A. That's not what I said.

5 Q. Okay. So the risk is higher for people who
6 have --

7 A. Yes.

8 Q. -- who are in dialysis --

9 A. Yes.

10 Q. -- correct?

11 A. Yes.

12 Q. We know Mr. King was a diabetic and had end
13 stage renal disease and was -- had hypertension,
14 correct?

15 A. Correct.

16 Q. Assume with me that Mr. King worked in the
17 heat; that he had to wear the heavy PPE, that he worked
18 in tight spaces and that he worked by himself. Given
19 those assumptions, was it unreasonable for Dr. Withers
20 to recommend that Mr. King not work alone?

21 MS. MARTIN: Objection, form.

22 A. That's not unreasonable.

23 Q. Okay. Now, are you aware that at least as of
24 the time Mr. King gave his deposition earlier in 2012 --

25 A. Uh-huh.

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1 A. Yes, I remember that.

2 Q. And I -- They asked you on the second page to
3 look at his psychological functions. Do you see that on
4 the second page at the very top?

5 A. Okay.

6 Q. It says: Check applicable box below. And you
7 checked Class 1 - Patient is able to function under
8 stress and engage in interpersonal relations. You put:
9 (No limitations). Do you see that?

10 A. Psychological, yes, correct.

11 Q. Correct. And then physical capability, you
12 have him -- I don't see that you checked off any
13 physical limitations. Did you?

14 A. No.

15 Q. Okay.

16 A. No, I did. No, I did.

17 Q. Which ones?

18 A. Fifty-one to a hundred pounds.

19 Q. And so is he going frequently with 51 to a
20 hundred pounds?

21 A. And up to 10 pounds, 20 pounds, 21 to
22 continuously up to 50 pounds --

23 Q. Right.

24 A. -- 67 to a hundred percent of the time.

25 Q. And you indicated he could work a total of ten

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1 hours per day?

2 A. Yes.

3 Q. And then on the cardiac it says -- you put
4 Class 1 (No Limitation)?

5 A. Correct.

6 Q. Did you do that primarily based on the history
7 that he had given you?

8 A. Right. He told me that he could -- he could
9 walk at least two to three flights of stairs. That
10 translates to at least ten mets and he had no symptom
11 after he did that.

12 Q. Uh-huh.

13 A. That's probably as much as I can do.

14 Q. Uh-huh.

15 A. And I don't have dialysis. So I think that's
16 pretty darn good --

17 Q. Is it --

18 A. -- for dialysis patients.

19 Q. I'm sorry to interrupt you. Is it ever
20 advisable to test what the patient is telling you to see
21 if -- if there's --

22 A. Yes, if --

23 Q. -- some confirmation?

24 A. Yes. If he tells me that he can -- he can walk
25 two flights of stairs and that he gets chest pain, yes,

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1 I asked him if he had any symptoms at the end of the two
2 flights of stairs. He said no, he didn't get terribly
3 short of breath, he didn't get any chest pain, he didn't
4 get dizzy; things like that.

5 Q. And do you remember the last time before this
6 lawsuit that you had a discussion with him about his
7 job?

8 A. You mean when?

9 Q. When.

10 A. Well, I can't recall when. But I had
11 discussions with him.

12 MS. BARKSDALE: Okay. I'll pass the
13 witness.

14 EXAMINATION

15 Q. (BY MS. MARTIN) Let me have you look at
16 Exhibit 17 first. Dr. Muniz, I'm going to show you
17 what's previously been marked as Exhibit 17 in this
18 litigation. Would you take a minute to look at it?
19 Have you seen this before?

20 A. Yes, I think I have.

21 Q. All right. At the top of it, it says that this
22 is a Job Site Analysis. Do you see that? It's a little
23 bit cut off.

24 A. Yes.

25 Q. Okay. And for -- The company is Lyondell,

Page 100

1 correct?

2 A. Yes.

3 Q. And the location is Bayport, correct?

4 A. Correct.

5 Q. Okay. And the job title is Condition
6 Monitoring Analyst. Do you see that?

7 A. Yes.

8 Q. Do you know what Matt King's position was?

9 A. He was a Vibration Tech.

10 Q. All right. Do you know if that is the same as
11 a Condition Monitoring Analyst?

12 A. I don't.

13 Q. Okay. When you look at this Job Title for
14 Condition Monitoring Analyst, you see at the -- about
15 the third level down it says: Essential Function,
16 correct?

17 A. Yes.

18 Q. Okay. Tell me what that says following that.

19 A. The following duties are considered essential
20 functions for this job in which the employee must be
21 able to perform.

22 Q. Okay. Assume with me that this is the Job Site
23 Analysis and the Essential Function sheet for Matt
24 King's position. Okay?

25 A. Uh-huh.

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1 Q. Look at that. Let's start with Job Task and
2 frequency. Under Job Task you see it must be able to
3 perform field inspection of rotating equipment. This
4 task may include but is not limited to. The first --
5 The point is walking various distances. And the
6 frequency says: Occasional to frequent depending on
7 task. Do you see that?

8 A. Yes.

9 Q. Okay. In your opinion, was Matt King able at
10 the time in 2010 when you saw him to walk various
11 distances occasionally --

12 A. Yes.

13 Q. -- to frequently?

14 A. Yes. He can do that.

15 Q. What about the second part: Climbing ladders
16 and stairs up to 80 feet?

17 A. Now, 80 feet is how many flight of stairs?

18 Q. I -- You know, I don't have an answer to that.

19 A. I think he can climb up to two flights of
20 stairs.

21 Q. All right. And what about ladders?

22 A. I think he can do ladders.

23 Q. Okay. And let's -- let's talk for a second --
24 I'm going to get a little bit off course from there.

25 Exhibit 49 that we looked at earlier, if you'll refer to

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1 it again, No. 2, this is the email from Dr. Withers.

2 And No. 2 under restrictions, he says: Not to work at
3 unprotected heights. Are you familiar with OSHA
4 regulations, Dr. Muniz?

5 A. No, I'm not.

6 Q. Okay. Do you know from what you know generally
7 whether or not working in unprotected heights in any
8 kind of job environment is restricted for most people?

9 MS. MARTIN: Object to speculation.

10 MS. BARKSDALE: Objection, speculation.

11 A. I don't.

12 Q. Let's go back to Exhibit 17 then: Climbing and
13 walking on elevated platforms. In your opinion, was
14 Matt King able since 2010 to work, climb and walk on
15 elevated platforms?

16 A. He can go up to two flights of stairs.

17 Q. Next job task is carrying tools (Approximately
18 up to 10 pounds). Was Matt King, in your opinion, able
19 to carry tools up to ten pounds in 2010?

20 A. Yes.

21 Q. Grasping is the next subpart. In your opinion,
22 was Matt King in 2010 able to grasp?

23 A. Yes.

24 Q. Okay. Next is Reaching. In your opinion in
25 2010, was Matt King able to reach?

1 A. Yes.

2 Q. The next subpart is Maneuvering and working in
3 tight places. In your opinion in 2010, was Matt King
4 able to maneuver and work in tight places?

5 A. Yes.

6 Q. Next is Repetitive hand/arm tasks. In your
7 opinion, was Matt King in 2010 able to do repetitive
8 hand/arm tasks?

9 A. Yes.

10 Q. Next is Bending, kneeling, squatting and
11 standing. In your opinion in 2010, was Matt King able
12 to bend, kneel, squat and stand?

13 A. Yes.

14 Q. And the final portion under there is Fine Motor
15 dexterity. In your opinion in 2010, did Matt King have
16 fine motor dexterity?

17 A. Yes.

18 Q. The next portion of that says: Must be able to
19 perform routine unit inspection systems to include but
20 would not be limited to: And it says: This task may
21 include but is not limited to:

22 Do you see where that says that?

23 A. Yes.

24 Q. Okay. And again, assuming that this Job Site
25 Analysis applies to Matthew king, in your opinion, in

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1 2010, could Matthew King climb up to 20 to 100 feet?

2 A. Yes. As long as that represents two to three
3 flights of stairs, I'm okay with that.

4 Q. So if it's the equivalent of two to three
5 flights of stairs, in your opinion Matt King was able to
6 do that in 2010?

7 A. Yes.

8 Q. Okay. Bending, squatting and kneeling is there
9 again. And I think we've already been through this, but
10 in your opinion in 2010, was Matt King able to bend,
11 squat and kneel?

12 A. Yes.

13 Q. The next subpart is Carrying small equipment or
14 hand tools. In your opinion in 2010, was Matt King able
15 to carry small equipment or hand tools?

16 A. Yes.

17 Q. The next portion is Grasping and reaching at
18 various heights. In your opinion in 2010, was Matt King
19 able to grasp and reach at various heights?

20 A. Yes.

21 Q. The next sub-portion is Manipulation of a
22 variety of hoses. In your opinion in 2010, was Matt
23 King able to manipulate a variety of hoses?

24 A. Yes.

25 Q. The next portion of this is Take readings

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1 (pressure, temperature, vibration) up to 2 times or more
2 per shift. In your opinion in 2010, was Matt King able
3 to take readings, putting pressure, temperature and
4 vibration up to two times or more per shift?

5 A. Yes.

6 Q. All right. Then it says underneath there:

7 This task may include but is not limited to:

8 Do you see that portion?

9 A. Yes.

10 Q. And it says Climbing. In your opinion, was
11 Matt King in 2010 able to climb?

12 A. Yes, two to three flights of stairs.

13 Q. Okay. Next is Visual focusing. In your
14 opinion in 2010, was Matt King able to visually focus?

15 A. Yes.

16 Q. The next portion is Bending, squatting and
17 kneeling. Again, in your opinion in 2010, was Matt King
18 able to bend, squat and kneel?

19 A. Yes.

20 Q. The next portion under there says: Must be
21 able to perform computer tasks to include e-mail
22 correspondence training and other assigned tasks up to
23 0-4 hours per week (sic), says Occasional. Do you see
24 where it says that?

25 A. Yes.

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1 Q. In your opinion in 2010, was Matt King able to
2 perform computer tasks to include e-mail correspondence
3 training and other assigned tasks up to zero to four
4 hours for day -- per day?

5 A. Yes.

6 Q. The next portion of this says: Must be able to
7 respond to emergency technical support requests on
8 non-routine hours in order to support the daily
9 operation of the process unit.

10 Do you see where it says that?

11 A. Yes.

12 Q. In your opinion, was Matt King able to respond
13 to emergency technical support requests on non-routine
14 hours in order to support the daily operation of the
15 process unit?

16 A. Yes.

17 Q. Okay. Let's go down to where there's a portion
18 that says: Physical Demands.

19 Do you see where it says that?

20 A. Yes.

21 Q. The first under -- section under Physical
22 Demands is lift -- lifting of weights. Do you see where
23 it says that?

24 A. Uh-huh. Yes.

25 Q. Now, next to it you'll see Frequency. And it

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1 says F, O and N. And if you go back, let's go one more
2 page behind and it'll tell you that frequency, N is
3 Never, zero percent; O is Occasional, 1 to 33 percent; F
4 is Frequent, 33 to 66 percent, and C is Constant, 66 to
5 a hundred percent. Do you see where it says that?

6 A. I got it, yes.

7 Q. Okay. So you understand that when you look at
8 what is listed in the inspection of under Frequency, the
9 F, N, O designations correspond with those --

10 A. Yes.

11 Q. -- requirements? So let's talk about lifting
12 weights. It's says: Under this job description,
13 lifting weights, zero to ten pounds occurs frequently
14 for tools and equipment to various heights.

15 In 2010, your opinion in 2010, was Matt
16 King able to lift weights of zero to ten pounds
17 frequently?

18 A. Yes.

19 Q. The next section is 11 to 20 pounds. And again
20 it's designated as frequent for tools and equipment to
21 various heights. In your opinion in 2010, was Matt King
22 able to lift 11 to 20 pounds frequently?

23 A. Yes.

24 Q. The next section is 21 to 50 pounds and it says
25 in there as Occasional for tools and equipment to

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1 various heights. In your opinion in 2010, was Matt King
2 able to lift weights of 21 to 50 pounds occasionally of
3 tools and equipment to various heights?

4 A. Yes.

5 Q. And the next section is 50 to 100 pounds and
6 the designation is Never. Is that correct?

7 A. Correct.

8 Q. Okay. And in accordance with the restrictions
9 that you put on Matt King was -- which were not to lift
10 more than 50 pounds under this lifting of weights, there
11 is no requirement for that; is that correct?

12 A. That's correct.

13 Q. Okay. The next portion is Carrying weights.
14 And we'll go through that as well. It is zero to ten
15 pounds. It says frequency is frequent and it's for
16 tools and equipment to various distances.

17 Do you see where it says that?

18 A. Yes.

19 Q. In your opinion in 2010, was Matt King able to
20 carry zero to ten pounds frequently with tools and
21 equipment to various places?

22 A. Yes.

23 Q. Next section is 11 to 20 pounds. In your
24 opinion in 2010, was Matt King able to carry weights
25 of 11 to 20 pounds frequently with tools and equipment

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1 to various distances?

2 A. Yes.

3 Q. The next carrying of weights is 21 to 50
4 pounds. The designation is Occasionally. And it's
5 tools and equipments to various distances. Do you see
6 where it says that?

7 A. Yes.

8 Q. In your opinion in 2010, was Matt King able to
9 carry weights of 21 to 50 pounds occasionally for tools
10 and equipment to various distances?

11 A. Yes.

12 Q. The final designation under carry of weights is
13 50 to 100 pounds. And it says: Never. Is that
14 correct?

15 A. That's correct.

16 Q. And in accordance with the restrictions you put
17 on Matt King to return to work, you were -- you also had
18 a restrictions that he could not carry more than 50
19 pounds, correct?

20 A. Correct.

21 Q. The next section is Push force. And it has
22 again this --

23 MS. PHIPPS: Did you say 50 or 30 pounds?

24 MS. MARTIN: It's 50.

25 MS. PHIPPS: I thought the restriction was

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1 30.

2 MR. PECKHAM: Less.

3 MS. MARTIN: Okay. We'll get there.

4 Q. Next -- Next section is Push force. And it
5 says -- Do you know what push force is?

6 A. You push on things.

7 Q. Okay. It says zero to ten. And it says:
8 Frequency is frequent, to use or manipulate hand tools,
9 equipment and valves at various heights. In your
10 opinion, was Matt King able to push force zero to ten
11 pounds frequently with that designation?

12 A. Yes.

13 Q. Next section is 11 to 20. And it has -- Let me
14 just go through it, 11 to 20, 21 to 50, 50 to 100, and
15 over 100 state: Never. Is that correct?

16 A. That's correct.

17 Q. The next section is -- I think it's Pull force.
18 Do you know what pull force is?

19 A. Something you're pulling.

20 Q. And again we see that zero to ten says frequent
21 to use or manipulate hand tools, equipment and valves at
22 various heights. Is that correct?

23 A. Correct.

24 Q. In your opinion, was Matt King in 2010 able --
25 able to use pull force zero to 10 frequently to use or

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1 manipulate hand tools, equipment and valves at various
2 heights?

3 A. Yes.

4 Q. And then you'll see that for Pull force, 11
5 through 20, 21 through 50, 50 through 100, and over 100
6 state: Never. Is that correct?

7 A. Correct.

8 Q. Next we have Positional Demand. Do you see
9 where it says that?

10 A. Yes.

11 Q. Okay. The first section under Positional
12 Demand is -- activity is sitting. And it's designated
13 as Frequent, sitting up to zero to two hours at a time,
14 up to two to four hours per day per shift. Do you see
15 where it says that?

16 A. Yes.

17 Q. In your opinion in 2010, was Matt King able to
18 sit frequently for up to zero to two hours at a time two
19 to four hours per day?

20 A. Yes.

21 Q. And the next section under that is Standing.
22 In your opinion in 2010, was Matt King able to stand up
23 two to four hours at a time up to six to eight hours per
24 day?

25 A. Yes.

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1 Q. Next section is Walking. In your opinion in
2 2010, was Matt King able to walk frequently up to two to
3 four hours at a time, up to four to six hours per day?

4 A. Yes.

5 Q. Or per shift?

6 A. Uh-huh.

7 Q. Okay.

8 A. Yes.

9 Q. Next section is Balancing and it's again
10 Frequently. In your opinion in 2010, was Matt King able
11 to balance frequently, which means maintaining his
12 balance while performing activities above ground level?

13 A. Yes.

14 Q. And then the next section is Climbing, which is
15 Often. In your opinion in 2010, was Matt King able to
16 climb steps, vertical and inclined stairs and other
17 structures?

18 A. Yes, so long as it's two to three flights of
19 stairs.

20 Q. Okay. Next section is Stooping. And it is
21 also Occasional. In your -- In your opinion in 2010,
22 was Matt King able to stoop while performing tasks?

23 A. Yes.

24 Q. Next section is Crouching. In your opinion in
25 2010, was Matt King able to crouch while performing

1 tasks?

2 A. Yes.

3 Q. The next section is Kneeling. In your opinion
4 in 2010, was Matt King able to kneel while performing
5 tasks?

6 A. Yes.

7 Q. The next section is Crawling. In your opinion
8 in 2010, was Matt King able to crawl to maneuver into
9 various places or positions?

10 A. Yes.

11 Q. The next section is Reaching. In your opinion
12 in 2010, was Matt King able to reach into various
13 places?

14 A. Yes.

15 Q. Next section is Grasping. In your opinion in
16 2010, was Matt King able to do repetitive grasping?

17 A. Yes.

18 Q. Next section is Repetitive hand tasks. In your
19 opinion in 2010, was Matt King able to do repetitive
20 grasping and arm movements?

21 A. Yes.

22 Q. Okay. Underneath that you'll see Environmental
23 Exposures. Do you see that section?

24 A. Yes.

25 Q. Okay. Under Noise you'll see Low to high

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1 levels, Occasional to Frequent. In your opinion, would
2 noise levels have any effect on Matthew King's condition
3 in 2010?

4 A. Would any noise? No. I mean, I think he can.
5 tolerate it.

6 Q. All right. Let's look at underneath there
7 where it says Weather conditions. It states: All
8 conditions to include rain, cold, humidity, excessive
9 heat. And it states: (Refer to heat index chart). All
10 right. Let's talk about that for a second. Matt King
11 worked in Bayport which is essentially Houston weather,
12 correct?

13 A. Uh-huh. Yes.

14 Q. How long has Matt King lived in Houston? Do
15 you know?

16 A. I don't know.

17 Q. Do you know where he grew up?

18 A. No, I don't know.

19 Q. Did you ever talk to Matt King about his
20 ability to tolerate heat?

21 A. I would think, if he's lived in Houston for
22 more than two or three years, he can tolerate the heat
23 to a certain degree.

24 Q. Do you know if Matt King was a runner?

25 A. I don't know that.

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1 Q. Uh-huh. Do you know if other conditions such
2 as thyroid disease that have issues with temperature
3 control?

4 A. Yes.

5 MS. BARKSDALE: Objection, irrelevant.

6 Q. So someone with thyroid disease might have
7 difficulty with excessive heat or excessive cold,
8 correct?

9 A. Yes.

10 MS. BARKSDALE: Objection, irrelevant.

11 Q. Okay. In your opinion in 2010, was Matt King
12 able to perform his job under all weather conditions
13 including rain, cold, humidity and excessive heat?

14 A. I have to put a limit -- limit on excessive
15 heat. I don't know how high he can go with the heat. I
16 mean, I think there's got to be a limit.

17 Q. Okay. And would his limit be different than an
18 average person's limit for heat?

19 A. I would -- I think, probably. I think I
20 would -- I would avoid excessive heat for sure in a
21 dialysis patient.

22 Q. Okay. And what would you consider excessive
23 heat and -- and length of time as excessive heat --

24 A. I would say --

25 Q. Wait. Hang on. Let me finish. -- to be

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1 reasonable for a person with end stage renal disease on
2 dialysis?

3 A. I think anything over a hundred degrees would,
4 I think, would be excessive.

5 Q. So barring a hundred degree weather, in your
6 opinion, would Matt King be able to perform his job
7 under all conditions to -- including rain -- including
8 rain, cold, humidity and excessive heat --

9 A. Yes.

10 Q. -- with that condition?

11 A. Right. Yes.

12 Q. What about in the next section, Odors, chemical
13 odors? Would Matt King have -- be able to tolerate
14 chemical odors as a -- as a person without end stage
15 renal disease?

16 A. Yes.

17 Q. Airborne particles and vapors, Dust and steam
18 and chemical vapors, in your opinion in 2010, would Matt
19 King have been able to be around airborne particles and
20 vapors as they're defined the same as any person who did
21 not have end stage renal disease?

22 A. Yes.

23 Q. Work in high precarious places says Climbing
24 ladders, climbing into pipe racks and towers. In your
25 opinion in 2010, was Matt able to climb ladders, climb

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1 into pipe racks and climb into towers?

2 A. Right. With the -- the limits of two to three
3 flights of stairs.

4 Q. The next section is Work in tight spaces. It
5 says: Tight places in work environment. In your
6 opinion in 2010, was Matt King able to work in tight
7 places within a work environment?

8 A. Yes.

9 Q. Next section is Chemical products. In your
10 opinion in 2010, was Matt King able to tolerate chemical
11 products the same as a person who did not have end stage
12 renal disease?

13 A. Yes..

14 Q. All right. The next is Hot surfaces, Heat from
15 pipes and products. In your opinion in 2010, was Matt
16 King able to be around hot surfaces which is heat from
17 pipes and products the same as a person without end
18 stage renal disease?

19 A. Yes, with the limit of a hundred degrees.

20 Q. Work around moving equipment is stated as Pumps
21 and other rotating equipment. In your opinion in 2010,
22 was Matt King able to work around moving equipment
23 including pumps and other rotating equipment the same as
24 a person who did not have end stage renal disease?

25 A. Yes.

1 Q. Then you'll see the next section is Safety
2 Equipment Required. It's Safety glasses with side
3 shields, Hearing protection, Hard hat, Chemical goggles,
4 Leather and chemical gloves as needed, ANSI approved
5 foot wear, Tyvek suite as needed, fire retardant
6 clothing, Safety Harness, Other PPE as required by OSHA
7 regulations per job assignment. In your opinion in
8 2010, was Matt King able to wear the safety equipment
9 that was required?

10 A. Yes.

11 Q. Let's go back to our lifting restrictions that
12 we talked about. And it was pointed out that the 30
13 pound lifting restriction that you gave was different
14 than the zero to 50 pounds, of 21 to 50 pounds that we
15 saw on these lifting weight demands. Is that correct?

16 A. That's correct.

17 Q. Is that for both of his arms or only the arm
18 with the fistula?

19 A. Only the arm with the fistula.

20 Q. Okay. So Matt King in his other arm can
21 lift -- lift 21 to 50 pounds; is that correct?

22 A. That's correct.

23 Q. And was he able to do so in 2010?

24 A. Yes.

25 Q. Okay. All right. I want to talk with you a

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1 little bit about risks that we discussed here today for
2 persons with end stage renal disease.

3 A. Yes.

4 Q. And one of the risks that was discussed at
5 length is heart disease.

6 A. Yes.

7 Q. All right. Was Matt King symptomatic or
8 asymptomatic for heart disease?

9 A. Asymptomatic.

10 Q. And -- And today as you see him, is he
11 symptomatic or asymptomatic for heart disease?

12 A. Asymptomatic.

13 Q. All right. Is Matt King at any higher risk for
14 heart disease?

15 A. Yes, he is.

16 Q. Okay. And why is he in that higher risk group?

17 A. Because of diabetes, high blood pressure and
18 being on dialysis.

19 Q. Okay. Is his --

20 A. And being a man, a male.

21 Q. Okay. And because Matt King has heart disease
22 but he's asymptomatic, would you send him back into a
23 work environment with the restrictions that we just
24 discussed if you thought he was at high risk for sudden
25 death?

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1 A. I --

2 Q. Well, let me -- let me back up. Let me back
3 up.

4 A. Yeah. I'm -- I'm not so sure he has heart
5 disease.

6 Q. Did you -- Okay. That's my next question.

7 A. I think he's a high risk for heart disease.
8 But I'm not so sure he has it.

9 Q. Okay. And that was my next question.

10 A. Yes.

11 Q. Today as we sit here, has Matt King ever, to
12 your knowledge, been diagnosed with heart disease?

13 A. No.

14 Q. Let's talk about cognitive deficits. Is Matt
15 King symptomatic or asymptomatic for cognitive deficits?

16 A. Asymptomatic.

17 Q. All right. And while I can recognize that Matt
18 King, because he has end stage renal disease, might be
19 in a higher risk group for that --

20 A. Uh-huh.

21 Q. -- along the cognitive deficit variable, I
22 think you said we start at, you know, there's
23 Alzheimer's type cognitive defects down, you know, to
24 first that then we're kind of in the middle when we talk
25 about cognitive defect as it --

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1 A. Uh-huh.

2 Q. -- relates to end stage renal disease --

3 A. Right.

4 Q. -- correct?

5 A. Correct.

6 Q. Okay. So Matt King is asymptomatic. Do you

7 occasionally test Matt's mental abilities when you see

8 him?

9 A. Yes.

10 Q. Okay. What types of tests do you do when you
11 see him?

12 A. Well, what I've done is, I -- I gave him
13 three-word recall. I also gave him -- told him to spell
14 earth backwards are world backwards. I also asked him
15 to do addition and subtractions. I also told him to --
16 asked him to do zero sevens. I also -- I think I also
17 told him to draw me a clock with a specific time.

18 Q. Okay. Has he been able to perform all of those
19 functions?

20 A. Yeah. He did fine.

21 Q. Okay. Before Matt King was given the
22 restrictions we see in Exhibit 49, do you believe he
23 should've been independently examined by a nephrologist?

24 A. Yes.

25 Q. Okay. Why do you believe that?

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1 (Recess taken.)

2 Q. Dr. Muniz, isn't it true that after Matt King
3 was fired from his position in 2010, that you received a
4 copy of the restrictions after he was fired?

5 A. Yes.

6 Q. That was the first time you had ever seen Dr.
7 Withers' restrictions?

8 A. Yes.

9 Q. I want to clarify another point. Matt King can
10 climb two to three flights of stairs, take a break and
11 then he could potential climb two to three more flights,
12 correct?

13 A. Correct.

14 Q. Exhibit 17 which is the job description that we
15 went through --

16 A. Uh-huh.

17 Q. -- bit by bit -- Okay -- did Dr. Withers ever
18 offer you a copy of that job description when you were
19 in discussions with him?

20 A. No.

21 Q. Did Dr. Withers ever invite you to come to the
22 plant to walk the plant and see where Matt went and what
23 he did?

24 A. No.

25 MS. MARTIN: That's it. Pass the witness.

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1 I declare under penalty of perjury that the
2 foregoing is true and correct.
3
4 _____
5 HENRY MUNIZ, M.D.
6
7
8 SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned
9 authority, by the witness, HENRY MUNIZ, M.D., on this
10 the _____ day of _____, 2013.
11
12 _____
13 NOTARY PUBLIC IN AND FOR
14 THE STATE OF _____
15
16 My Commission Expires: _____
17
18
19
20
21
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1 STATE OF TEXAS

2 COUNTY OF HARRIS

3 REPORTER'S CERTIFICATE

4 ORAL DEPOSITION OF HENRY MUNIZ, M.D.

5 JANUARY 15, 2013

6 I, the undersigned Certified Shorthand Reporter in
7 and for the State of Texas, certify that the facts
8 stated in the foregoing pages are true and correct.

9 I further certify that I am neither attorney or
10 counsel for, related to, nor employed by any parties to
11 the action in which this testimony is taken and,
12 further, that I am not a relative or employee of any
13 counsel employed by the parties hereto or financially
14 interested in the action.

15 SUBSCRIBED AND SWORN TO under my hand and seal of
16 office on this the _____ day of _____,
17 2013.



C. Lee Parks

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